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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,902	12/27/2000	John C. Gaddy	TIMB-003	2760
34690	7590	03/24/2005	EXAMINER	
RIMAS T. LUKAS PO BOX 3295 HALFMOON BAY, CA 94014			SELLERS, DANIEL R	
		ART UNIT		PAPER NUMBER
		2644		

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/750,902	GADDY ET AL.	
	Examiner Daniel R. Sellers	Art Unit 2644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 27 December 2000.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-60 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-60 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 27 December 2000 is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/01/02.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claim 1, 21, and 41 are rejected under 35 U.S.C. 102(e) as being anticipated by DeNicola et al., U.S. Patent 6,288,753 (hereinafter DeNicola).

3. Regarding claim 1, see DeNicola

In a network system including at least one client device and at least one server device operatively coupled for communication, a method for synchronizing an audio capture program with a streamed audio file, the method comprising:

receiving at least one selection request from a user on said server device; (Col. 5, lines 27-29)

*transmitting a program from said server device to said client device; (Col. 10, lines 1-5)
streaming a digital audio file from said server device to said client device; (Col. 5, lines 40-42)
detecting, by said program, a first state change associated with an audio stream player disposed within said client device, said program preparing said audio capture program on said client device in response to said first state change; (Col. 8, lines 16-22)*

detecting, by said program, a second state change associated with said audio stream player; and said program initiating said audio capture program on said client device at a fixed time interval from when said second state change is detected for capturing data.

DeNicola teaches a distance learning method, wherein an audio and video signal is transmitted to and from clients to a central server. He teaches the transmittal of a program to and from the server, and one skilled in the art can recognize that many different methods of transmission are possible (Col. 18, lines 17-29). DeNicola does not teach an audio capture program per se, however in the learning distance methods it is inherent that audio capture is used. It is also inherent that the system can detect many state changes corresponding to the input of a client (Col. 11, lines 5-6, 22-23, 34-35, and 42-47). DeNicola, therefore, teaches these limitations.

4. Regarding claim 21, see the preceding argument with respect to claim 1. DeNicola teaches the method, and the apparatus with these features.
5. Regarding claim 41, see the preceding argument with respect to claim 1. DeNicola teaches the method, which is inherently on a computer readable medium.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
2. Claims 2-20, 22-40, and 42-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeNicola as applied to claim 1 and in further view of Hilton, U.S. Patent Application Publication, US 2002/0026256.

3. Regarding claim 2, the further limitation of claim 1, see Hilton
... wherein said method further comprises recording said data captured by said audio capture program on a storage medium disposed in said client device. (Par. 0083, lines 1-4)

DeNicola teaches a distance learning system, which captures an audio-video signal. However, DeNicola only teaches the transmission of audio from the client back to the server. Hilton teaches a method of remote mixing, wherein the audio mix is downloaded to the client, and an audio capture program captures audio on a storage medium in the client device. It would have been obvious for one of ordinary skill in the art to combine the teachings of DeNicola and Hilton for the purpose of teaching music in a distance learning environment.

4. Regarding claim 3, the further limitation of claim 1, see Hilton
... wherein said method further comprises, compressing said data captured by said audio capture program, streaming said compressed data to said server, and recording said compressed data on a storage medium disposed in said server device. (Par. 0045)

Hilton teaches the transmission of compressed data streams.

5. Regarding claim 4, the further limitation of claim 1, see Hilton. Hilton teaches local and remote mixing and editing of a single project, wherein it is inherent that control of the audio capture program has the ability to be stopped (Par. 0061, lines 13-16 and Par. 0088).

6. Regarding claim 5, the further limitation of claim 4, see the preceding argument with respect to claim 4. Hilton inherently teaches the ability to stop audio capture, wherein a state change of a program, or a physical entity, is sensed.

7. Regarding claim 6, the further limitation of claim 1, see the preceding argument with respect to claim 3. Hilton teaches the transmission of the project from any client to any other client, which includes the originating server, or studio.

8. Regarding claim 7, the further limitation of claim 6, see the preceding argument with respect to claim 3. Hilton teaches compression.

9. Regarding claim 8, the further limitation of claim 1, see Hilton

... wherein said network comprises the Internet. (Par. 0028)

Hilton teaches the use of the Internet.

10. Regarding claim 9, the further limitation of claim 4, see the preceding argument with respect to claim 4. Hilton inherently teaches the stopping of the audio capture, wherein it is a selection based on a user's interaction with the system. One skilled in the art should recognize that a number of selections are made in an editing and recording system, including but not limited to setting recording volumes, balances, and equalization parameters.

11. Regarding claim 10, see the preceding argument with respect to claims 1 and 2. The combination of DeNicola and Hilton teaches a method with these features. The combination receives requests from clients, transmits an audio file for local manipulation, and a program, which detects state changes that allow the addition of new material to the audio recording.

12. Regarding claim 11, the further limitation of claim 10, see the preceding argument with respect to claim 5. The combination teaches a program, which can detect several different state changes.

13. Regarding claim 12, the further limitation of claim 11, see the preceding argument with respect to claim 5. The combination inherently allows the stopping of an audio capture program.
14. Regarding claim 13, the further limitation of claim 11, it is inherent that a number of state changes can be detected by an audio playback program. Hilton teaches remote playback (Par. 0062, lines 12-15). It is inherent that a playback program has a start, stop, and seek ability. Furthermore, the program is inherently able to detect state changes in the means providing the start, stop, and seek ability.
15. Regarding claim 14, the further limitation of claim 11, see the preceding argument with respect to claims 9 and 13. It is inherent that many selections are made by the user of the system, and the combination has these features.
16. Regarding claim 15, the further limitation of claim 10, the combination teaches an audio stream player (Par. 0045).
17. Regarding claim 16, the further limitation of claim 10, see the preceding argument with respect to claim 8. The combination teaches the use of the Internet.
18. Regarding claim 17, the further limitation of claim 10, see the preceding argument with respect to claim 2. The combination teaches the use of local storage.
19. Regarding claim 18, the further limitation of claim 17, see the preceding argument with respect to claim 6. The combination teaches the transmission of the performance from any client to any client, including the originating server.

20. Regarding claim 19, the further limitation of claim 18, see the preceding argument with respect to claim 3. The combination teaches the use of compression prior to transmission.

21. Regarding claim 20, the further limitation of claim 10, see Hilton ... *wherein said user's performance is recorded on said server device.* (Par. 0140). Hilton teaches the use of RAID (redundant array of independent disks) for storage. It is inherent that the performance is uploaded back to the originating site and stored and this RAID device when remote mixing and recording is finished.

22. Regarding claim 22, the further limitation of claim 21, see the preceding argument with respect to claim 2. The combination teaches the recording on a storage medium on a client.

23. Regarding claim 23, the further limitation of claim 21, see the preceding argument with respect to claim 3. The combination teaches the compression of data, the streaming of data, and the recording of data on a storage medium on a server.

24. Regarding claim 24, the further limitation of claim 21, see the preceding argument with respect to claim 4. The combination teaches the stopping of audio capture.

25. Regarding claim 25, the further limitation of claim 24, see the preceding argument with respect to claim 5. The combination teaches the detection of a state change corresponding to a stopping of audio capture.

26. Regarding claim 26, the further limitation of claim 21, see the preceding argument with respect to claim 6. The combination teaches the uploading of data to a server.
27. Regarding claim 27, the further limitation of claim 26, see the preceding argument with respect to claim 7. The combination teaches the compression prior to transmission.
28. Regarding claim 28, the further limitation of claim 21, see the preceding argument with respect to claim 8. The combination teaches the use of the Internet.
29. Regarding claim 29, the further limitation of claim 24, see the preceding argument with respect to claim 9. The combination teaches the detection of a state change corresponding to a user selection, which stops the audio capture.
30. Regarding claim 30, see the preceding argument with respect to claim 10. The combination teaches an apparatus with the features of receiving a selection, transmitting a file, and transmitting a program with the ability to detect state changes corresponding to recording a performance.
31. Regarding claim 31, the further limitation of claim 30, see the preceding argument with respect to claim 11. The combination teaches the apparatus with the feature of detecting a third state change.
32. Regarding claim 32, the further limitation of claim 31, see the preceding argument with respect to claim 12. The combination teaches the apparatus with the feature of stopping the audio capture in response to the third change.

33. Regarding claim 33, the further limitation of claim 31, see the preceding argument with respect to claim 13. The combination teaches the apparatus with the feature of transmitting the third state change.
34. Regarding claim 34, the further limitation of claim 31, see the preceding argument with respect to claim 14. The combination teaches the transmission of the third change in response to a user selection.
35. Regarding claim 35, the further limitation of claim 30, see the preceding argument with respect to claim 15. The combination teaches an audio stream player.
36. Regarding claim 36, the further limitation of claim 30, see the preceding argument with respect to claim 16. The combination teaches the use of the Internet in the apparatus.
37. Regarding claim 37, the further limitation of claim 30, see the preceding argument with respect to claim 17. The combination teaches that the performance is recorded on the client.
38. Regarding claim 38, the further limitation of claim 37, see the preceding argument with respect to claim 18. The combination teaches that the performance is transmitted to the server.
39. Regarding claim 39, the further limitation of claim 38, see the preceding argument with respect to claim 19. The combination teaches that the performance is compressed prior to transmission.

40. Regarding claim 40, the further limitation of claim 30, see the preceding argument with respect to claim 20. The combination teaches that the performance is recorded on the server.

41. Regarding claim 42, the further limitation of claim 41, see the preceding argument with respect to claim 2. The combination teaches the recording on a storage medium on a client.

42. Regarding claim 43, the further limitation of claim 41, see the preceding argument with respect to claim 3. The combination teaches the compression of data, the streaming of data, and the recording of data on a storage medium on a server.

43. Regarding claim 44, the further limitation of claim 41, see the preceding argument with respect to claim 4. The combination teaches the stopping of audio capture.

44. Regarding claim 45, the further limitation of claim 44, see the preceding argument with respect to claim 5. The combination teaches the detection of a state change corresponding to a stopping of audio capture.

45. Regarding claim 46, the further limitation of claim 41, see the preceding argument with respect to claim 6. The combination teaches the uploading of data to a server.

46. Regarding claim 47, the further limitation of claim 46, see the preceding argument with respect to claim 7. The combination teaches the compression prior to transmission.

47. Regarding claim 48, the further limitation of claim 41, see the preceding argument with respect to claim 8. The combination teaches the use of the Internet.

48. Regarding claim 49, the further limitation of claim 44, see the preceding argument with respect to claim 9. The combination teaches the detection of a state change corresponding to a user selection, which stops the audio capture.

49. Regarding claims 50-60, the combination teaches a method, and it is inherent that the method is performed by a computational device, and the method is stored on a device that is readable by the computational device.

50. Regarding claim 50, see the preceding argument with respect to claim 10. The combination teaches a method with the features of receiving a selection, transmitting a file, and transmitting a program with the ability to detect state changes corresponding to recording a performance.

51. Regarding claim 51, the further limitation of claim 50, see the preceding argument with respect to claim 11. The combination teaches the method with the feature of detecting a third state change.

52. Regarding claim 52, the further limitation of claim 51, see the preceding argument with respect to claim 12. The combination teaches the method with the feature of stopping the audio capture in response to the third change.

53. Regarding claim 53, the further limitation of claim 51, see the preceding argument with respect to claim 13. The combination teaches the method with the feature of transmitting the third state change.

54. Regarding claim 54, the further limitation of claim 51, see the preceding argument with respect to claim 14. The combination teaches the transmission of the third change in response to a user selection.

55. Regarding claim 55, the further limitation of claim 50, see the preceding argument with respect to claim 15. The combination teaches an audio stream player.

56. Regarding claim 56, the further limitation of claim 50, see the preceding argument with respect to claim 16. The combination teaches the use of the Internet in the method.

57. Regarding claim 57, the further limitation of claim 50, see the preceding argument with respect to claim 17. The combination teaches that the performance is recorded on the client.

58. Regarding claim 58, the further limitation of claim 57, see the preceding argument with respect to claim 18. The combination teaches that the performance is transmitted to the server.

59. Regarding claim 59, the further limitation of claim 58, see the preceding argument with respect to claim 19. The combination teaches that the performance is compressed prior to transmission.

60. Regarding claim 60, the further limitation of claim 50, see the preceding argument with respect to claim 20. The combination teaches that the performance is recorded on the server.

Conclusion

61. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Matsutsuka et al., U.S. Patent 6,211,872.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel R. Sellers whose telephone number is 703-605-4300. The examiner can normally be reached Monday to Friday 9am to 6:30pm with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 703-305-4040. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


SINH TRAN
SUPERVISORY PATENT EXAMINER

DRS